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VIA ELECTRONIC CASE FILING

Honorable Richard M. Berman, U.S.D.J.
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Courtroom 14A
New York, New York 10007

MEMO ENDORSED
P2

Re: **Angel Vargas, et al. v. Midtown Air Condition and Ventilation, Ltd.**
Case No. 1:07-cv-03343-RMB

Dear Judge Berman:

This firm represents Midtown Air Conditioning and Ventilation, Ltd., the Defendant in the referenced employment discrimination matter. We are writing to request the Court's assistance with a discovery issue that has surfaced recently. Plaintiffs have informed Defendant that Plaintiff Felix Bonilla has left the country without explanation and will not return for his deposition before the close of the discovery period.

Defendants first issued a Notice for the Deposition Mr. Bonilla on July 16, 2007. The Notice requested that Bonilla attend his deposition early in September, 2007. Due to Plaintiffs' delay in providing written discovery responses, Defendant was required to adjourn Mr. Bonilla's deposition to a later date. On or about October 5, 2007, this Court granted an extension of the discovery period to December 10, 2007, with the comment "Final Extension is Granted."

On October 24, 2007, Defendant issued another Notice of deposition to Mr. Bonilla, this time requiring him to appear for his deposition on November 21, 2007. On or about October 31, 2007, the parties agreed to move Mr. Bonilla's deposition to November 27, 2007.

We received a telephone call from Plaintiffs' counsel advising that Mr. Bonilla was not in the country and inquiring whether I was available on December 17, 2007, to take his deposition. I indicated that my calendar was open that day, and Plaintiffs' counsel told me that they would contact Mr. Bonilla to find out whether he could return in time to have his deposition taken on December 17, 2007. Thereafter, I was told that Mr. Bonilla would not return before December 17, 2007. We have not been given any explanation for Mr. Bonilla's unavailability.

Defendant will suffer extreme prejudice in its efforts to defend itself against Mr. Bonilla's claims if it is denied the opportunity to take Mr. Bonilla's deposition. Defendant has been diligent in its

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attempts to take Mr. Bonilla's deposition, and it only learned last week that Mr. Bonilla was out of the country and unavailable for his deposition. Defendant also has been extremely flexible in coordinating the existing discovery schedule.

In light of the above, Defendant respectfully requests that the Court order Mr. Bonilla to appear for his deposition on or before December 10, 2007,¹ and further, that if Mr. Bonilla fails to appear, his claims shall be dismissed from this lawsuit.

Respectfully Submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.,



Dominick C. Capozzola

cc: Honorable Henry B. Pitman, U.S.M.J. (via certified U.S. mail)
Ambrose Wotorson, Esq. (by facsimile)

PL's claims will be dismissed
if Mr. Bonilla is NOT made
available for a deposition by
12/24/07.

SO ORDERED,
Date: 11/27/07 Richard M. Berman
Richard M. Berman, U.S.D.J.

¹ Defendant is available to take Mr. Bonilla's deposition on November 29 or 30, or December 6 or 7, 2007. The parties currently have the Deposition of Plaintiff Angel Vargas scheduled for December 10, 2007. However, Defendants are willing to move his deposition to an earlier date if necessary to accommodate Mr. Bonilla.